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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 358

PORTER-WADLEY LUMBER COMPANY ET AL.,
Petitioners,

vs.

C. ORBIN BAILEY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN B. FILES,
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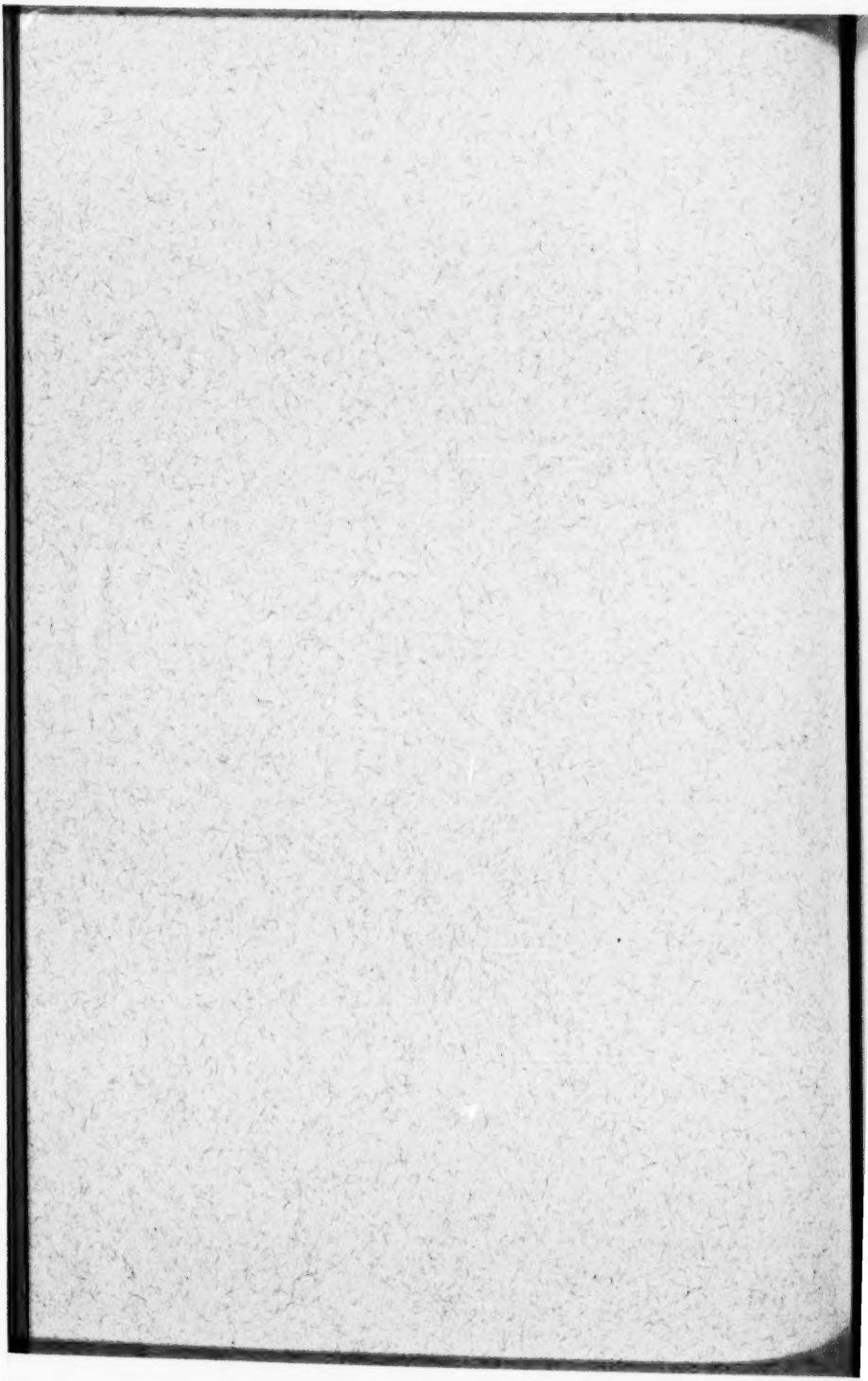

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No. 358

PORTER-WADLEY LUMBER COMPANY ET AL.,
Petitioners,

vs.

C. ORBIN BAILEY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, J. K. Wadley, Mrs. Lillian J. Porter, Margaret Porter, Mrs. W. R. Grim, Emeline Grim Fuller, Loretta Grim Thomas, and J. M. Wilson, respectfully show:

1.

C. Orbin Bailey, respondent, instituted proceedings in the Twenty-Sixth Judicial District Court of Louisiana within and for the Parish of Webster on May 2nd, 1938, claiming the ownership and possession of the NE¼ of the SW¼ and the SE¼ of the NW¼ of Section 29, Township 23 North,

Range 9 West, Webster Parish, Louisiana; said property formerly belonged to the Porter-Wadley Lumber Company, an Arkansas corporation, which corporation sold said land February 12th, 1916, reserving certain mineral rights, to-wit:

> "The vendor, the Porter-Wadley Lumber Company, retains, reserves, holds, keeps and owns for a term of 35 years, all oil, gas, sulphur and mineral rights of any and every description that may exist, or be found in and under the lands herein conveyed, with the rights of ingress and egress for purposes of searching, developing, exploiting and producing the said oil, gas, sulphur, or minerals and the right to take water and fuel from the lands for the purpose of such exploitation, with the right to build pipe lines and tanks for the purpose of saving and removing the products that may be found.
>
> "Porter-Wadley Lumber Company shall pay to the vendee hereunder, his heirs and successors or assigns one-half of all the net revenues that may be obtained from the sale of the oil, gas, sulphur and minerals herein reserved, all more fully shown by reference to said deed, which appears recorded in Vol. 26, page 377, Records of Webster Parish, Louisiana, made a part hereof by reference."

He alleged petitioners claim to own the said mineral rights and all other assets of said corporation and have recorded a declaration of ownership of the minerals in the above lands in the Conveyance Records of Webster Parish, Louisiana.

2.

Petitioners removed timely and in accordance with law said cause from the District Court of Louisiana to the District Court of the United States for the Western District of Louisiana, Shreveport, Division, May 25th, 1938.

3.

Petitioners answered denying the title of respondent in the mineral rights so reserved by the Porter-Wadley Lumber Company, and alleging that said lumber company was incorporated under the laws of the State of Arkansas and was dissolved without debts in accordance with the laws of that State, and upon said dissolution, petitioners, as the sole stockholders, became vested with the title to the corporate assets under the laws of Arkansas; that they have never sold or disposed of said mineral rights; that Margaret Porter, one of the stockholders and a co-owner in said mineral rights, was a minor, which suspended the current of prescription not only as to her interest, but as to the interest of the other co-owners as well; that respondent was estopped to attack the title of petitioners by his joint execution of oil, gas, and mineral leases covering the minerals under the above described land and by receiving rents and revenues from petitioners in accordance with said reservation continuously through November 5th, 1936.

4.

The District Court held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with the laws of Arkansas, could not affect the title or disposition of the mineral rights in property in Louisiana, and that it continued to exist as a corporation in Louisiana; that its corporate existence was controlled by Act 267 of 1914 of the Acts of Louisiana, and that the dissolution of said corporation under the laws of Arkansas was not effective in the State of Louisiana.

5.

An appeal from said judgment to the United States Circuit Court of Appeals, Fifth Circuit, was prosecuted and

by its decree herein on April 1st, 1940, the judgment of the District Court was affirmed; the Court of Appeals held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with the laws of Arkansas, did not effect a dissolution of said corporation in Louisiana, and that the dissolution of said Arkansas corporation was controlled by Act 267 of 1914 of the State of Louisiana, as interpreted by the Supreme Court of Louisiana, holding that the dissolution of an Arkansas corporation under the laws of Arkansas is not effective in Louisiana.

Petitioners timely applied for a rehearing and assigned errors to the judgment of the District Court and of the Court of Appeals affirming said judgment, and after consideration of said application by the Court of Appeals, it was denied June 13th, 1940.

6.

In this cause, there is drawn in question the validity of Act 267 of 1914 of the statutes of Louisiana as interpreted by the Court of Appeals, Fifth Circuit. Petitioners aver that said act as interpreted is repugnant to the constitution and laws of the United States, and that respondent in this case cannot recover the property involved upon the pleadings and evidence introduced on the trial of the case unless it be held that Act 267 of 1914 of the statutes of Louisiana is applicable to and controls the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation dissolved in accordance with the laws of Arkansas.

7.

That said act so interpreted and the refusal of the court to give effect to the law of Arkansas violate and are contrary to Section 1, Article 4, of the constitution of the United States, which requires full faith and credit be given in each

State to the public acts, records, and judicial proceedings of every other State, and accordingly, petitioners allege that said act, 267 of 1914 of Louisiana, as interpreted is unconstitutional, null and void.

8.

Petitioners further aver that said reservation of mineral rights was a binding valid contract between respondent and petitioners at the time of its execution, and the rights so reserved became vested in petitioners and the interpretation of Act 267 of 1914 of the Legislature of Louisiana by the Court of Appeals, Fifth Circuit, and the reasons given in said opinion change the terms and conditions of said contract and annul the rights vested in petitioners thereunder in violation of Article 1, Section 10, of the constitution of the United States.

9.

Respondent expressly acknowledged the title of petitioners by accepting rentals and royalties from petitioners in accordance with the terms of said mineral reservation and by joining in a written contract wherein respondent did "ratify, affirm and approve the execution" by petitioners of a written lease covering the mineral rights reserved by petitioners, authors in title of the property in controversy, and under the jurisprudence of Louisiana, respondent thereby acknowledged petitioners' title and waived prescription, which ratification "being in writing would have been sufficient to take the lease out of prescription even if prescription had already run". (*White* v. *Ouachita Natural Gas Company*, 177 La. 1052); the Court of Appeals, in its opinion, contrary to the jurisprudence of Louisiana, held "acceptance of rentals under such circumstances does not resurrect mineral servitudes which have become prescribed either on the theory of tacit renunciation or of estoppel".

10.

Petitioners aver that a correct decision of the issues presented by this case will determine not only the rights of the litigants in the property in controversy, but will likewise be decisive of the rights, titles, and interests of various persons who have acquired rights in large tracts of land subject to the same mineral reservation.

11.

Petitioners aver that the opinion of the Court of Appeals held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the State of its creation, was still an existing corporation in the State of Louisiana, which opinion was contrary to and inconsistent with its decree against petitioners as individual stockholders of said corporation in a suit in which the corporation was not cited or made a party litigant.

12.

Petitioners show that the opinion of the Court of Appeals is erroneous for the reasons and on the grounds above indicated and as set forth in the assignments of error (R. 217-220, 269-273) and set forth in detail in the briefs filed herewith, and this Honorable Court should require said cause to be certified to it for review and determination in accordance with the provisions of the acts of Congress.

WHEREFORE, and for the reasons set forth in the brief in support hereof, petitioners respectfully pray that a writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record

in all proceedings in the case numbered and entitled on its docket, 9300, *Porter-Wadley Lumber Company, et al., Appellants* v. *C. Orbin Bailey, Appellee,* and that the said opinion and decree of the Court of Appeals, Fifth Circuit, may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem mete and just, and your petitioners will forever pray.

JOHN B. FILES,
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